

COMMUNITY DEVELOPMENT DEPARTMENT

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PLANNING COMMISSION MEETING MINUTES

REGULAR MEETING

SEPTEMBER 22, 2009

PRESENT: Tanda, Mueller, Escobar, Hart, Koepp-Baker, Liegl, Moniz

ABSENT: None

LATE: None

STAFF: Community Development Director (CDD) Molloy Previsich, Senior Planner (SP) Linder, and Minutes Clerk Johnson

Chair Tanda called the meeting to order at 7:01 p.m., as he asked Commissioner Liegl to lead the pledge of allegiance to the U.S. flag.

DECLARATION OF POSTING OF AGENDA

Minutes Clerk Johnson certified that the meeting's agenda was duly noticed and posted in accordance with Government Code Section 54954.2.

OPPORTUNITY FOR PUBLIC COMMENT

Chair Tanda opened, and then closed, the floor to public comment for matters not appearing on the agenda, as none were in attendance indicating a wish to address such matters.

MINUTES:

August 25, 2009

COMMISSIONERS MUELLER/ESCOBAR MOTIONED TO APPROVE THE AUGUST 25, 2009 MINUTES AS PRESENTED. THE MOTION PASSED (6-0-1-0) WITH THE FOLLOWING VOTE: AYES: KOEPP-BAKER, ESCOBAR, HART, MONIZ, MUELLER, TANDA; NOES: NONE; ABSTAIN: LIEGL, who had not been present for the meeting; ABSENT: NONE.

PUBLIC HEARINGS:

1) USE PERMIT, UP-09-06: JARVIS- CHAMPIONS

A request for approval to locate a 13,200 sq. ft. gymnastics academy in an existing 54,000 sq.ft. building located at 700 Jarvis Dr. within the Morgan Hill Business

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ACADEMY:

Ranch which has a Planned Unit Development zoning designation. (APN 726-31-024)

SP Linder presented the staff report by highlighting the following:

- request: Gymnastics Academy ~~ Conditional Use Permit (CUP) ~~ findings required
- location: plan to move business from one light industrial district to another
- overview of:
 - times of operation; numbers of students (need identified for high ceilings in building; room for growth of business)
 - parking/traffic circulation needs (no adverse impacts identified)
- no use of chemicals on site or within surrounding businesses

Commissioners asked questions *concerning*:

Koepp-Baker any changes in operation from prior CUP [no]

Mueller need for adding Condition of Approval: evacuation plan approved by fire department [contained in CUPs for other schools; staff training essential]

Chair Tanda open, and then closed, the public hearing as there were no persons in attendance indicating a wish to speak to the matter.

COMMISSIONER MUELLER OFFERED A RESOLUTION APPROVING A CONDITIONAL USE PERMIT TO ALLOW FOR THE OPERATION OF A GYMNASTICS ACADEMY LOCATED AT 700 JARVIS DRIVE IN THE LIGHT INDUSTRIAL ZONING DISTRICT, WITH A MODIFICATION TO EXHIBIT A, SECTION 3 (ADD D):

APPLICANT WILL PROVIDE EVACUATION PLAN, APPROVED BY THE FIRE DEPARTMENT, AND PRESENT TRAINING TO ALL ADULTS AND STAFF INVOLVED IN THE BUSINESS, PRIOR TO OCCUPANCY.

NOTING THE FINDINGS AND CONDITIONS CONTAINED WITHIN THE RESOLUTION, COMMISSIONER ESCOBAR SECONDED THE MOTION.

Under discussion, Commissioner Liegl asked if there would be facilities for showers for the program participants. SP Linder responded that rest rooms were required, but she was not aware of shower facilities being provided.

The public hearing was reopened.

Jenny Liu, of San Jose, told the Commissioners she is the business owner. She explained that the students do not shower on site, but go home for that purpose. Ms. Liu said that most students are at the Academy for 1 – 1.5 hours with about 20 students there for three hours of training only. “All students do leave and go home for showering,” she said.

The public hearing was closed.

THE MOTION PASSED (7 - 0) WITH THE FOLLOWING VOTE: AYES:

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DISCUSSION:

KOEPP-BAKER, ESCOBAR, HART, LIEGL, MONIZ, MUELLER, TANDA;
NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.

2) DISCUSSION OF FACTORS RELATED TO POSSIBLE MODIFICATIONS TO RDCS POLICIES FOR 1) EXCEPTION TO LOSS OF BUILDING ALLOCATIONS (ELBAs); AND (2) ON-GOING PROJECT ALLOCATIONS:

Planning Commission will review and discuss the proposed Exception to the Loss of Building Allocation policy and proposed changes to the On-Going Project Allocation policy. The Commission is asked to provide direction to staff on any recommended changes or refinements needed, so that recommended policies can be presented to the City Council.

SP Linder gave the staff report, referencing the direction given to staff and the Planning Commission by the City Council regarding the need for a policy to establish guidance in considering extension requests. A draft ELBA extensions policy and the proposed changes to the Allocation Policy for On-Going Projects was considered by the Commission at the previous meeting. SP Linder explained that in order to respond to various concerns and ideas of the Commissioners, staff has developed three options for consideration, offering various degrees of flexibility and guidance:

- Option #1: contains steps 1 – 8 defining developer *action/inaction* and emphasizes readiness to proceed with project; *no definite limit* to extensions
- Option #2 provides guideline limits for extension with 8 steps of completion and is *time limited*; depending on completion of the order of the steps, applicants may be viewed unfavorably for further extension
- Option #3: addresses the potential for a *mass extension of projects with* specific time limits according to the completion of the steps 1 – 8;

SP Linder advised, “We have provided a range for options for the ELBA. In all options, if applicants ask for further extensions, there must be demonstration of why the delay occurred – and evidence as to why it was not the fault of the developer. The other topic was modification to the on-going projects category.”

Commissioners expressed preferences for the various options:

Escobar: Prefers Option #2; some support for Option #3. He referenced the chart, saying, “This chart and the months indicated are a good guideline (recommended guideline) but developers should meet the guidelines unless difficult financial conditions continue to exist.” He commended staff for presenting the option which should not exceed 48 months (but in cases of extreme hardship, could be so extended)

CDD Molloy Previsich noted the intent of staff was to have steps 1 – 6 completed, with some flexibility to consider project-specific circumstances relative to the step guidelines for evaluation by the Planning Commission and ultimately the City Council.

Hart: for all the Options (pages 2 of each) use of the words “crisis” and “downturn” are subject to interpretation; the lack of a definition for these words could result in having an interpretation that could indicate “crisis” of varying proportions; “I really think we need a more clear definition, one which is not so nebulous.”

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Mueller said he had issues with the language as well, and had traded e-mails with staff regarding the matter

Moniz asked, “~~What~~ **When** does the City Council expect as result of probable action tonight **a recommendation?**”

CDD Molloy Previsich explained that the matter is expected to the City Council in October but no later than the November 4 meeting of the Council.

Liegl EIRs are only valid for five years; if a project goes beyond five years, will a new EIR be required?

CDD Molloy Previsich: EIRs actually can be used for more than 5 years, but a different set of findings apply; it is always necessary to review and be sure that circumstances, the project and so forth have not change so significantly that the CEQA analysis is no longer valid.

Liegl if there are changes and the project is no longer feasible to proceed as the developer wants, what happens?

CDD Molloy Previsich: once the ELBA guidelines are in place, there will be some differences in development approaches. Some may pursue modifications to the project, which is OK under the RDCS as long as the same number of points are achieved.

Mueller reminded that projects must meet Building Codes or other regulations; the developers must meet some of the more strict regulations, we have addressed this issue in the past as some projects are long running and have adapted for points over time; I’m more worried about mass extension

Koepp-Baker asked: “What will the criteria be to determine the need for extensions? Financing becoming available on a broad scale? Remember, letters from developers of not having funding available from a bank have not been forthcoming.

SP Linder remarked, “If the project wants to start now, a letter from the bank regarding financing should be available now.”

Koepp-Baker: should such be put into the options?

Mueller: I assume legal has perused all three options? CDD Molloy Previsich the options were routed but we have not yet gotten feedback.

Mueller: since legal is concerned about the ultimate language, we need their input.

Chair Tanda opened the public hearing.

Rocke Garcia, 1000 Old Quarry Road, was present to speak on behalf of other developers who could not be present at the meeting.

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Mr. Garcia reminded that he had spoken previously in favor of an extensions policy. "Now," he said, "staff has come back with options 1 – 2 - 3 all of which should be fine with the builders." Mr. Garcia went on to address a specific issue: Capriano subdivision has completed items 1 - 4 and item 7 for all of the lots. Items 5 and 6 have to occur after the recordation of the map. "You can have the plan check submitted, but it is not worth anything until the map has been recorded. Right now, with Capriano, we are in reconfiguration of plans which have already gone through ARB and Planning staff, but with the state of the economy, well, I'm optimistic. I do feel item 7 is more important then item 5."

Dick Oliver, 385 Woodview Ave #100, said, "As an overall comment, I would love to see the City work under a free market system, but we are under constraints because of Residential Growth Control Measures E, P, and C. I would like to submit plans and just build like developers do in other cities. Something to be aware of is that once the housing market improves there may still be effects, as lenders may cause further delays due to oversupplies of housing as builders begin building again. If we look at allocations under an artificial release system, those allocations could expire and we would lose money and maybe property rights, too."

Mr. Oliver then commenced to list issues of concern:

- previous bank letters have been essentially meaningless – if the city requires evidence of financing or non-financing, it is very difficult to have banks write letters as to why the lender will or will not provide funding; Bank's attorneys are reluctant to have denial letters written
- would appreciate on steps 1 and 2 information on having to be more specific [CDD Molloy Previsich suggested clarifying that this means discretionary permits]
- option 2, page 2; extension in months: change 08-09 ~~46~~ to 55 months; 09-10 ~~40~~ to 55 months; last 2 steps are each 3 months apart so it becomes impossible for building. 15 units needs to be at least 6 months - should be 9 months; emphasis on providing steps 1 and 2 would help to alleviate concerns

Mr. Oliver continued by saying, "Should have discretion on items 5 and 6; if we could submit the master plan check under step 5; it must be approved under step 6 as generally we would have it submitted and we know it can easily be lost. Mr. Oliver told of submitting plans to Public Works with response/results going 'very slowly'. Mr. Oliver urged more flexibility for item 6. "If we have a change due to a Code change, we developers must spend dollars; and in some cases, we must downsize due to the economy but we don't want to make changes until we are pretty sure of what we need to do."

Commissioner Koepp-Baker said, "If getting a bank letter is impossible - and we know what others went through - what would be proof of *not getting financing*. I can see a situation where the economy starts getting better – what would work for developers to provide to verification for the City?"

Mr. Oliver said the developers would need to give thought to a solution. "It needs to be a valid document from the bank but the City deserves verification."

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Commissioner Mueller recalled that in past downturns, when a developer was beginning to build again the lenders were very careful to determine numbers of units to be financed. "This time *will be* the same developers must gradually 'ramp up' but can they still get money?"

Mr. Oliver responded, "The banks are still hesitant. I recently was able to get money from a private investor – not a bank." He explained that if we sell units, we may get loans from banks based on proof of sales. But banks know when developers have gotten letters from the City talking about projects getting behind, which raises concerns of losing rights to build and losing value, and therefore banks are very careful.

CDD Molloy Previsich mentioned that one marker of housing/financing market recovery could be the general availability of 70% loan-to-value (LTV) construction loans.

Commissioner Mueller said, "It also be telling when developers of multiple projects can get loans, then we can see the economy is starting to turn. We will know when money is starting to free up as loans ~~can be determined~~ *will be approved*."

Mr. Oliver agreed with Commissioner Mueller by saying, "If three projects in the City get started, that could be good indicator."

Chris Borello spoke to the Commissioners regarding his application/allocations for an on-going project, telling the specifics of the project. Mr. Borello told of his master plan for all 244 units. He then asked, "If further CEQA investigation is needed, would the project meet criteria for on-going in 2010?" Mr. Borello said he thought larger projects should be considered differently. "I hope to reach my goal of being an on-going project because if there is a gap in the allocations, that may scare off potential investors. Rather than having different allocation process, why not come up with a simple benchmark to commence construction?" Mr. Borello continued by saying, "If we don't use our allocations, we lose them. We need help to ride out variations and swings in the market. We also need to prevent developers from hoarding allotments; for those with no intent of developing, there should be some benchmarks with 60 months tied to it."

With no others present indicating a wish to speak to the matter, the public hearing was closed.

Commissioner Liegl asked, "Why not provide the ability to 'stop the clock'? If it is not the fault of the developer, why not just stop the clock and continue the project after the issue has been resolved? For example, if the problem is that PG&E causes the hold up, or water issues are the hold up, or planning causes the hold up, we should just say 'stop the clock' and start the clock again when the issue is solved?"

Commissioner Mueller responded, "I don't think it can be that open-ended. The RDCS voter-approved measures are very specific as to time frames. The whole intent of initiative was intent to have dwellings built." Commissioner Liegl said, "But can we stop the clock?" Commissioner Mueller responded, "There are no provisions for such within the initiative."

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Commissioner Moniz said he would like to have the City Attorney address the “pause” matter. He also asked how many projects were on the record for extensions now? SP Linder said a quick count would indicate at least 14 with the actual number probably about 15 – 20.

Chair Tanda commented that of the 3 options, he liked option 1 the best, as it is the least quantitative. Many circumstances don’t lend themselves to fixed standards. Option 1 requires all 8 steps, but also provides flexibility. “I must agree with Mr. Borello: keep it simple.” We do need confirmation that the City Attorney is on board with that Option 1. The provision on the second page of option 1 needs further refinement of language “- in view of the current economic system –“. If funding becomes readily available, banks might say there are too many buildings in the market, then we would have a similar situation of having developers not get funding so it would be beyond the control of the developers.” Chair Tanda then polled the Commissioners as to which Option was preferred.

Moniz: Option 1; don’t need more complexity and this Option doesn’t eliminate discretion by City Council

Mueller: Option 1; Mr. Oliver pointed out issues with Option 2 and Option 3 is too open ended; would like to see paragraph #2 (page 2) of Option 1 have modification to the first sentence as the language is so broad it could be used forever – perhaps the statement could address how to proceed when the economy improves

Escobar: might be well to have a ‘sunset date’ on Option 1 so the developer could come back within a time certain with the project automatically going back to the Planning Commission and the City Council; if different conditions exist at that time, it would cause a review – not a ‘sunset’ for terming out but for review which could in reversion or modification even further

Liegl: Option 1

Koepp-Baker: Option 1

Hart: likes the simplicity of Option 1, but remains troubled with language

Discussion ensued regarding the possibility of listing discretionary permit for Option 1 to assist developers, along with suggestions for language changes.

Chair Tanda said, “I feel what we are requesting is to have staff take our comments and work them into a refinement of Option 1, for example, the current ELBA used with certain factors taken into consideration.”

CDD Molloy Previsich said staff will revise the title of Option 1, and SP Linder mentioned the possibility of adding benchmarks. CDD Molloy Previsich said the issue will be returned to the Commission on October 13 and staff could still meet a target date for the City Council to have it to them in October.

Turning to the issue of ongoing projects, SP Linder noted that the added language was italicized to clarify that when the City considered circumstances (1) for the delay *and* (2) annually (possibly presenting more difficulty for large projects, but at first extension request, consideration of on-going projects which would basically be the ‘same with some added conditions’.

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Commissioner Mueller remarked, "If we award allocations by the first of March, the next filing date for competitions is October, so when the next date comes up, unless it is a very small project, it would be difficult for a developer to meet the time frame and we may see a 'blank year'. If the larger projects have to make a decision to compete for a second year under this plan, it would be almost impossible for a large project to meet the requirements.

Chair Tanda noted that it was not required, but in the interest of transparency of government, he would open a public hearing, allowing members of the audience the opportunity to comment on the matter.

Mr. Oliver asked how the plan would apply. "I understand the value to a new project, but Mission Ranch has been an on-going project for 15 years." SP Linder explained that if a project is in line with the building schedule as amended by ELBA, it would be 'ok'.

Mr. Borello asked how a project that is 'not ongoing right now'.

Commissioner Mueller clarified that as soon as the developer completes steps 1 and 2 or the first phase of a project is 50% completed, then it is considered with other large projects to be on-going.

Chair Tanda asked, "Contrary to comments of developers, what if a developer wants to permit-pay and only finish phase 1. If the developer exhibits intent to not finish a project, how would that be handled?"

SP Linder reminded of the original policy recommendations, and said the Commissioners might 'raise the bar' but that it must be recognized such action may scare lenders. She also noticed another approach: the developer who does nothing, but still may stay current with development standards.

Commissioner Mueller recalled, "The approved initiative says that developer inaction cannot be a reason for extension, and a bank would be crazy to allow such. I think allocations must go away from the developer if their part is not done."

Chair Tanda agreed, saying, "With checks and balances, it should not be possible."

Commissioner Mueller urged clarification of steps 1 and 2 and to add other clarifying language to Option 1. SP Linder indicated staff will work on such before returning the matter for final review by the Commissioners.

STUDY SESSION:

3) PROPOSED CIRCULATION

The purpose of this meeting is for the Planning Commission to review and understand the content of the proposed General Plan Circulation Element Amendment, with focus on the text of the proposed Element.

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ELEMENT

AMENDMENT:

CDD Molloy Previsich noted that this item is a continuation of a study session on the text of the Proposed Circulation Element Amendment. “We have reached the Level of Service (LOS) section,” she said, so we can continue the review page-by-page.

Regarding the LOS definitions, Commissioner Mueller suggested referencing the definitions and including them instead in the Transportation Impact Analysis Guidelines, so the facts would be known and tables kept up to date without amendment the General Plan. He also said it would be beneficial would maintain plus (+) and minus (–) descriptors which are unique to the City. CDD Molloy Previsich said that, consistent with industry standard definitions, it is proposed to retain of the +/- for signalized intersections, but not for unsignalized intersections or road segments. Commissioner Mueller insisted there was need to maintain descriptor and keep the tables.

Chair Tanda led discussion on the importance of LOS and not designing for “failure”, including concern about a “bottomless” level F. CDD Molloy Previsich noted this as a comment on the Draft EIR, and indicated that there could be consideration of describing “floor” level of delay for an F. “We are taking look at the extent of Fs and we may consider mitigation for falling below a defined floor.”

Commissioner Liegl said, “An F is not acceptable in any way – it is not proper planning and is wrong. We must find mitigation.” Commissioner Koepp-Baker agreed: “Something as important this which will be affecting downtown for 50 years – we can not plan to fail.”

CDD Molloy Previsich explained there are two ways to look at the scenario: for projects that fall below the standard (such as D or E or F), mitigations may not exist for projected downtown development by 2030 and that may put developers in situation of having to do EIRs and this could affect the viability and feasibility of downtown projects. From the CEQA perspective, if the City is not planning on requiring mitigations such as road/intersection widening downtown, then future EIRs would not be helpful. Also, there would remain the opportunity for the City or Redevelopment Agency to pursue improvements in the future, possibly through working with owners of properties for redeveloping their sites in a manner that would allow for circulation improvements, such as at the corners of Main/Monterey.

Commissioner Mueller commented, “I wish we had another way to do the Fs. We also have a lot of Es. I don’t think we should be the setting standards that low.”

CDD Molloy Previsich said the consultants had thought some regional intersections might be candidates to allow Es, and so the initial project description/proposed changes to LOS Policies identified various intersections, but the actual study did not show that all of those would even end up at Es. Therefore, when staff prepared its recommendations for the public hearings, we may not recommend establishing all those studied to be allowed as E’s. She went on to say that staff and the Commissioners may want to the edit list with respect as whether to accept an E at an intersection or perhaps maintaining at a D or D-. Commissioner Mueller urged

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retention of LOS at those intersections as high as possible at this point in time. CDD Molloy Previsich said, "When we are back into the public hearings, based on comments received, we will see some changes for recommendation to intersections."

Chair Tanda commented it would be necessary to understand what the City wants for density downtown, which is generally the most congested of any area. Commissioner Mueller noted, "If a couple of intersections are in trouble potentially now, it could override the next 500 - 600 units in master EIR, which is continued as one EIR and could overarch the entire development downtown."

CDD Molloy Previsich responded, "The Downtown Specific Plan will be considered at the next meeting. So if the downtown LOS is below a D+ , which is the current standard, the City will need to make findings and adopt a statement of override for downtown intersections. The Master EIR will provide basis for doing that. The circulation element is a reality check and consistency must be considered: if we know the LOS is already at D or E and we don't see widening an intersection, why would we establish a higher LOS standard?"

Commissioner Koepp-Baker inquired about the livable communities (LCG) grant the City had applied for in use in Monterey Road Streetscape Planning. CDD Molloy Previsich advised, "The grant was not awarded to us; but we can try again, or the RDA could provide funds."

Commissioner Escobar suggested a better descriptor (rather than livable community downtown) would be: *vibrant downtown*. Other Commissioners agreed.

Chair Tanda noted that the policies need a Safety Goal, focused on children and should include some engineering, enforcement and education.

Regarding Circulation Goals, Commissioners suggested the following:

- policy 2..2 ~~County~~ **VTA**
- Goal 3 LOS **D** defined here

The question was raised re: keeping intersections at **E** or change; should the intersections be maintained at **D** instead of **E**; Chair Tanda suggested funding for mitigating improvements could come from outside development (outside the City); Commissioner Escobar asked if the City wanted to discourage use of those intersections for a regional emphasis? Commissioner Mueller said he did not think it should be encouraged. "If that happens, we must plan to manage the intersections and work on buffering the arterials with landscaping. If Coyote develops," he said, "we need a viable plan to widen arterials or there will be no option. It is important to manage traffic on the arterials and not in the community."

Commissioner Escobar replied, "If application is of concern at intersections, but if the City actively encourages a set LOS at the intersections, then drivers will find way to beat system."

CDD Molloy Previsich commented that there will most likely not be as many proposed **Es** as are listed now, but staff and consultants will return with suggestions

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for change.

Commissioner Mueller asked about the need to focus on the intent of grade separations for Madrone and Dunne. "I don't see language for an interim. If they will be at grade for while, that's OK." The Consultant's recommendation was that we should continue to plan a grade separation at Dunne with the connection at Church Street.

Other issues discussed were:

- East - West roadway connection with Woodland Acres: is there a street? Commissioner Mueller said it was a planned subdivision and when built, the street will intersect with Old Monterey Road
- Section 3.18 clarification of goal 4 by adding Hale/Santa Teresa
- map to be made current with the completion of the Initial Study
- Trails Master Plan to be presented in the future
- pedestrian accesses
- LOS consistency
- proposed actions: sub-discussion of proposed further modifications: all input from workshops together with revised document for public hearing on Circulation Document (proposed amendment) so different language; already incorporated so far as staff and consultant recommending

CDD Molloy Previsich spoke of the reasoning for recommendation to the City Council, including consideration of creative ideas, such as a "floor" for LOS F. She also advised that the public hearings on the Circulation Element will begin January 2010 (likely January 12th).

Discussion followed regarding potential modifications to the Circulation Element and how a EIR could be 're-triggered'.

Commissioner Mueller raised the issue of 'smart growth downtown' and asked, "What if rapid transit never comes?" CDD Molloy Previsich responded, "We have not made an assumption of reduced vehicular trips due to transit, so we have presented the 'worse case analyses.'" Commissioner Mueller reminded, "We are only talking about building to 2030." CDD Molloy Previsich replied, "If we are talking about downtown specifically, 2030 may not be the ultimate build out, but it would be pretty close. Remember, there is little vision for buildings over four stories. With the current vision, there will 2 – 3 story buildings, with limited 4 stories (need an appropriate one-half acre site). Commissioner Mueller retorted, "Many things could go to higher density and we need a need trigger for build out with a mass transit system." It was suggested that issue might be the subject for a future agenda discussion of RDCS.

ANNOUNCEMENTS / COMMISSIONER IDENTIFIED ISSUES

None

CITY COUNCIL REPORTS

CDD Molloy Previsich reported that the City Council would undertake public hearing on the Hale Signature General Plan Amendment project tomorrow.

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ADJOURNMENT Noting that there was no further business for the Planning Commission at this meeting, Chair Tanda adjourned the meeting at 9:04 p.m.

MINUTES RECORDED AND TRANSCRIBED BY:

JUDI H. JOHNSON, Minutes Clerk

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